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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 WASTE ACTION PROJECT,

10 Plaintiff,

11 v.

12 DRAPER VALLEY HOLDINGS, LLC,

13 Defendant.

Case No. C12-1870RSL

ORDER REGARDING MOTIONS
TO COMPEL PRODUCTION

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15 This matter comes before the Court on “Plaintiff’s First Motion to Compel” (Dkt.
16 # 19) and “Plaintiff’s Motion to Compel Document Production from Perdue Foods, LLC” (Dkt.
17 # 26). Plaintiff sued defendant Draper Valley Holdings, LLC, for alleged violations of the Clean
18 Water Act related to discharges from its poultry slaughterhouse in Mount Vernon, Washington,
19 between March 2008 and June 2012. At the time the complaint was filed, Draper Valley was
20 owned by Coleman Natural Foods, which in turn was owned by Perdue Foods, LLC (or a related
21 entity). In December 2012, Draper Valley’s discharge permit was transferred to Perdue.

22 In April 2013, plaintiff issued requests for production to Draper Valley seeking
23 Perdue’s audited financial statements and tax returns for 2011 through the present. Draper
24 Valley objected, arguing that because Perdue is not a party to this action, its financial situation is
25 irrelevant. When plaintiff filed a motion to compel production, Draper Valley for the first time
26 argued that it did not have possession, custody, or control over the documents and they would

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1 have to be sought directly from Perdue. Four days after Draper Valley filed its opposition,
2 plaintiff served a Rule 45 subpoena on Perdue seeking the same documents. The subpoena was
3 issued by this court, served on Perdue's registered agent in Washington, and demanded
4 production here in Seattle. The financial records sought were located in Maryland.

5 Having reviewed the memoranda, declarations, and exhibits submitted by the
6 parties, the Court finds as follows:

7 (1) Perdue's financial records are relevant to a determination of the economic impact of
8 any penalty that might be assessed in this action and may also contain information regarding the
9 profitability of Draper Valley during the alleged period of noncompliance. See Idaho
10 Conservation League v. Atlanta Gold Corp., 879 F. Supp.2d 1148, 1167 (D. Idaho 2012).
11 Because the liability and penalty phases of this litigation are proceeding concurrently, discovery
12 regarding these issues is not, as Perdue would have it, premature.

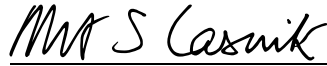
13 (2) Draper Valley has waived all objections other than relevance and shall produce the
14 requested documents as discussed below.¹

15 (3) The Court has considered Perdue's overbreadth and confidentiality objections.
16 Although the requests for production are appropriately tailored to obtain information regarding
17 the economic benefits of non-compliance and the economic impact of potential penalties,
18 Perdue's financial documents are not publicly available and are arguably entitled to some
19 protection from public disclosure. Draper Valley's production of the requested financial
20 statements and tax returns shall, therefore, be subject to the protections set forth in the Stipulated
21 Protective Order (Dkt. # 14) entered in this case on August 30, 2013. The documents – and the
22 information contained therein – shall be used only for prosecuting, defending, or attempting to
23 settle this litigation.

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25 ¹ Because compliance with the subpoena served on Draper Valley is being compelled, the Court
26 need not resolve the procedural irregularities surrounding the subpoena served on Perdue.

1 For all of the foregoing reasons, plaintiff's motion to compel production from
2 Draper Valley (Dkt. # 19) is GRANTED. Plaintiff's motion to compel production from Perdue
3 (Dkt. # 26) is DENIED as moot.

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5 Dated this 23rd day of January, 2014.

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7 Robert S. Lasnik
8 United States District Judge
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